

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Phosphine Gas and Magnesium Phosphide
DPR Regulation No. 08-003

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6400 of Title 3, California Code of Regulations. This proposed action would designate phosphine gas and magnesium phosphide as restricted materials.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on September 15, 2008. Comments regarding this proposed action may also be transmitted via e-mail <dpr08003@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Phosphine gas materials have been in use as pesticides in the U.S. for more than 50 years. Metal phosphides (aluminum phosphide and magnesium phosphide) are primarily used for insect control in stored commodities and vertebrate pest control. These metal phosphides are usually applied as solids (pellets or granular-containing sachets) that react with water vapor in the air to form phosphine gas, the actual toxic agent.

In addition to the metal phosphides, phosphine gas itself has been registered as a pesticide since 2001. The gas materials presently come in either a 100 percent formulation, to be diluted and injected by a proprietary application device, or a two percent formulation for direct injection. Phosphine is classified as a flammable gas, with a lower explosive limit of 1.8 percent in air.

From 1994 through 2005, there were 88 illnesses reported to DPR's Pesticide Illness Surveillance Program that were related to exposure to phosphine products. DPR conducted work site evaluations of several commodity fumigation facilities that use phosphine gas and metal phosphides, and has done extensive review of illness data, enforcement activities, and regulatory

¹ If you have special accommodation or language needs, please notify DPR. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

requirements. The labels do not appear to address the complexity of the conditions in facilities, such as proper monitoring procedures, and exhaust or ventilation systems used to control exposure.

Existing law (Food and Agricultural Code [FAC] sections 14004.5 and 14005) authorizes the Director to adopt, by regulation, a list of restricted materials based upon criteria including danger of impairment of public health; hazards to pesticide applicators, farmworkers, and domestic animals; hazards to the environment from pesticide drift onto streams, lakes, and wildlife sanctuaries; and hazards to wildlife and other crops through persistent residues in the soil. The Director shall adopt regulations that govern the possession and use of any restricted material that he or she finds and determines is injurious to the environment or to any person, animal, crop, or other property. DPR proposes to amend section 6400(e) by designating phosphine gas and magnesium phosphide as state-restricted materials.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation would have no significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 14004.5 and 14005.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 14004.5 and 14005.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Regulations
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted above:

George Farnsworth, Environmental Program Manager
Worker Health and Safety Branch
(916) 445-4163

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.5(a)(19) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

Director

Date